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Letter dated 3 May 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/110). The Counter-Terrorism Committee has received the attached fourth report from Djibouti submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Note verbale dated 28 April 2005 from the Permanent Mission of Djibouti to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Djibouti to the United Nations presents its compliments to the Committee and, with reference to its letter dated 26 January 2005, has the honour to transmit to it herewith the fourth report of Djibouti on its implementation of the provisions of Security Council resolution 1373 (2001) concerning counter-terrorism (see enclosure).

Enclosure

[Original: French]

Fourth report submitted by the Government of the Republic of Djibouti to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

This report is in response to the questions and comments of the Counter-Terrorism Committee in its letter dated 26 January 2005.

1. Implementation measures

1.1 In respect of paragraph 1 (a) of the resolution, Djibouti's third report states that a reform of the Penal Code is planned "with a view to updating and modernizing the texts". The Committee would appreciate receiving a progress report on this matter. The Committee would like to emphasize that compliance with this part of the resolution should be treated as a priority by Member States.

1.1 The reform that will update and modernize the criminal legislation, and the provisions of the Penal Code in particular, is still in the planning stage. We are expecting a workshop to be held in conjunction with the United Nations Office on Drugs and Crime (UNODC) regarding the incorporation of international instruments into domestic law. Originally scheduled for February, the workshop was put off to a later date because of scheduling problems.

1.2 The Committee takes note of the provisions of the Act on Money Laundering for the freezing of funds and other financial assets of "illicit origin" in case evidence exists that "they could be used to finance terrorist activities" or by the order of a judge, if it is proven that funds of "lawful origin" are being used for terrorist purposes.

In this regard, the Committee would appreciate knowing if there are any administrative measures in place to seize such assets temporarily, as a precautionary measure, when there is only suspicion that they could be used by terrorists. Please provide the Committee with a copy of any such measures.

1.2 With regard to precautionary measures to seize "assets" on the basis of a suspicion, article 4 (2) (11) of the Act on Money Laundering provides that "assets in the control of a criminal organization shall be confiscated when such assets are linked to an offence or are liable to be used for the purpose of financing terrorism".

Article 4 (2) (13) further regulates the disposal of confiscated assets as follows: "The funds or assets confiscated shall devolve to the State, which may allocate them to a fund for combating organized crime or drug trafficking. The assets shall remain encumbered by an amount equivalent to the value of any rights *in rem* legally created in favour of third parties.

In cases of confiscation by default, the confiscated assets shall devolve to the State and shall be converted into cash according to the established procedures in the matter. However, if a court, ruling on a motion to vacate judgement, discharges the accused, it shall order the restitution by the State of the value of the confiscated

assets, unless it is established that such assets are the proceeds of a crime or an offence."

There is no administrative measure allowing the temporary seizure of assets simply on a suspicion. However, any report of a suspicion by the Financial Information Service or the Public Prosecutor's Office may give rise to measures ordering the confiscation of assets seized by a judge (art. 4 (1) (1) et seq.).

1.3 Regarding the regulations that are in place for the alternative remittance systems and informal banking networks, the Committee would be pleased to receive an outline of the provisions of the Act on Money Laundering dealing with these issues, particularly those of articles 2 and 9 mentioned in Djibouti's third report.

1.3 The regulations that are in place for the alternative remittance systems and informal banking networks are found in article 2 (2) (9), which provides that "the immediate exchange of banknotes or coins in different currencies and the delivery of cash against some other form of payment in a different currency constitutes a manual exchange operation within the meaning of this law".

Individuals or businesses habitually engaged in performing manual exchange operations must:

(a) Submit a statement of activity, before starting operations, to the Central Bank of Djibouti with a view to obtaining the authorization to do business as provided under existing law, and show proof in that statement of the legal source of the funds needed to set up the establishment;

(b) Establish the identity of their clients by requiring the presentation of an original, valid official document bearing a photograph, of which a copy is to be kept, before performing any transaction involving more than one million francs or any transaction conducted under unusually or unnecessarily complicated conditions;

(c) Keep a chronological record of all operations, indicating their nature, the amount involved, the full name of the client and the number on the document presented, in an account book numbered and initialled by the competent administrative authority, which must be kept for at least five years after the last operation recorded.

The same obligations apply to individuals or businesses habitually engaged in the transfer of funds.

These are the terms of the Act on Money Laundering with regard to alternative remittance systems and informal banking networks.

We would ask the Committee to specify whatever other information it would like to have.

1.4 With regard to the questions raised by the Committee in its previous letter at paragraph 1.7, referring to the implementation of paragraph 2 (a) of the resolution, the Committee wishes to emphasize the need for Member States to have in place legislation criminalizing activities contained therein, in spite of the fact that, in the case of Djibouti, they have not occurred.

1.4 The Republic of Djibouti takes careful note of the Committee's suggestion on the implementation of paragraph 2 (a) of the resolution. We shall study the possibility, in the light of our laws and principles, during the forthcoming workshop with the United Nations Office on Drugs and Crime.

1.5 In relation to the Arab Convention for the Suppression of Terrorism, to which Djibouti is a party (according to paragraph 1.18 of Djibouti's latest report), the Committee takes note that this Convention has not been translated into domestic legislation. In this context, the Committee wishes to remind Djibouti to become a party, as a matter of urgency, to the relevant international conventions and protocols, whether or not it is a party to regional conventions on the matter. The Committee further recalls that paragraph 3 (d) of the resolution calls on all Member States "to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999".

The Committee would appreciate receiving an update on the steps that have been taken by Djibouti to become party to such conventions.

1.5 The Committee is reminded that the Republic of Djibouti has taken steps to accede to and ratify 11 international anti-terrorism instruments, with the exception of the International Convention for the Suppression of the Financing of Terrorism, which it expects to ratify in the near future.

As for the incorporation of the provisions of international instruments into domestic law, the Republic of Djibouti would like to start having the Committee's cooperation in the form of technical assistance.

1.6 Regarding the implementation of paragraph 2 (e) of the resolution, and the response provided in paragraph 1.19 of the report, the Committee would appreciate receiving a clarification of the responsibilities of foreign residents who commit a criminal act outside Djibouti.

1.6 Foreign residents in the Republic of Djibouti who commit a criminal act are subject to the same penalties as its nationals. If a foreign resident commits a criminal act abroad, the courts of Djibouti have no jurisdiction except where the victim is a Djiboutian or where the interests of Djibouti are compromised.

In all cases, when the Government of the Republic of Djibouti receives a request for extradition made in accordance with the law, it reviews the request.

1.7 The Committee takes note of the ratification of the 10 international conventions and protocols relating to terrorism that were pending at the time of the last report. In this regard, the Committee would appreciate receiving a progress report on their incorporation into domestic law.

1.7 See the response to paragraph 1.5: Djibouti has acceded to 11 of the conventions and protocols relating to terrorism.

1.8 In paragraph 1.24 of Djibouti's latest report, it is stated that "the Government is interested in acceding" to the United Nations Convention against Transnational Organized Crime and "will do so as soon as the opportunity arises". The Committee would be pleased to be kept informed of

this matter, due to the strong links — clearly recognized by Djibouti — between organized crime and terrorism.

1.8 As it had indicated it intended to do, in paragraph 1.24 of its previous report, the Republic of Djibouti has since then ratified, in January 2005, the United Nations Convention against Transnational Organized Crime and two of its Protocols. The instruments of accession to the Convention, to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention, and to the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the Convention, were deposited with the Secretary-General on 20 April 2005.

2. Assistance and guidance

2.1 The Committee wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the resolution. The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee again encourages Djibouti to let it know if there are further areas in which assistance or advice might be of benefit to it in its implementation of the resolution.

2.1 The Republic of Djibouti would like the technical assistance of the Committee, working in conjunction with the United Nations Office on Drugs and Crime, in the area of incorporating international instruments into domestic law.

2.2 The Committee wishes to develop a constructive dialogue with Djibouti in relation to measures it is taking to implement the resolution; in particular with regard to those areas here identified as a priority. If Djibouti feels that it could benefit from discussing aspects of the implementation of the resolution with the experts of the Committee, it is welcome to contact the Counter-Terrorism Executive Directorate, as indicated in paragraph 3.1 below. In addition, the Committee may, through its Executive Directorate, contact the competent authorities of Djibouti to discuss any further matters related to the implementation of the resolution.

2.2 Djibouti has taken careful note of the offer the Committee is making and will definitely contact those indicated.

3. Submission of further reports

3.1 The Committee and its Executive Director stand ready to provide further clarification to Djibouti on any of the matters raised in this letter. The Executive Director can be contacted through Ms. Roselaure Charles (tel: 1 (212) 457-1853; fax: 1 (212) 457-4041; and/or e-mail: charles4@un.org).

3.1 Djibouti notes with satisfaction the availability of the Committee and its Executive Director and has made a record of the contact information for the Director and his assistant.

3.3 The Committee may, in a future stage of its work, have further comments or questions for Djibouti arising from other aspects of the resolution. It would be grateful to be kept informed of all relevant developments regarding the implementation of the resolution by Djibouti.

3.3 Djibouti will certainly, as is its practice, inform the Committee about any new developments and any matters relating to the implementation of the resolution.